

the highest quality category, in a merged category consisting of the highest and the second highest quality categories.

(2) Notwithstanding paragraph (1), the appointing official may not pass over a preference-eligible in the same category from which selection is made, unless the requirements of section 3317(b) or 3318(b), as applicable, are satisfied.

(d) Each agency that establishes a category rating system under this section shall submit in each of the 3 years following that establishment, a report to Congress on that system including information on—

(1) the number of employees hired under that system;

(2) the impact that system has had on the hiring of veterans and minorities, including those who are American Indian or Alaska Natives, Asian, Black or African American, and native Hawaiian or other Pacific Islanders; and

(3) the way in which managers were trained in the administration of that system.

(e) The Office of Personnel Management may prescribe such regulations as it considers necessary to carry out the provisions of this section.

(Added Pub. L. 107-296, title XIII, §1312(a)(2), Nov. 25, 2002, 116 Stat. 2290.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (b), is set out under section 5332 of this title.

PRIOR PROVISIONS

A prior section 3319, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 421, related to prohibitions on employment of members of same family in the competitive service, prior to repeal by Pub. L. 95-454, title III, §307(h)(1), title IX, §907, Oct. 13, 1978, 92 Stat. 1149, 1227, effective 90 days after Oct. 13, 1978.

EFFECTIVE DATE

Section effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as a note under section 101 of Title 6, Domestic Security.

§ 3320. Excepted service; government of the District of Columbia; selection

The nominating or appointing authority shall select for appointment to each vacancy in the excepted service in the executive branch and in the government of the District of Columbia from the qualified applicants in the same manner and under the same conditions required for the competitive service by sections 3308-3318 of this title. This section does not apply to an appointment required by Congress to be confirmed by, or made with the advice and consent of, the Senate.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 422.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 858.	June 27, 1944, ch. 287, §9, 58 Stat. 389.
.....	5 U.S.C. 869.	June 27, 1944, ch. 287, §20, 58 Stat. 391.

Former sections 858 and 869 are combined and restated for clarity and to conform to section 3318(a). The

word "authority" is substituted for "officer" in recognition of the several appointing authorities named in section 2105(a)(1). The words "shall select for appointment to each vacancy in the expected service in the executive branch and in the government of the District of Columbia from the qualified applicants in the same manner and under the same conditions required for the competitive service by sections 3308-3318 of this title" are substituted for "In the unclassified Federal, and District of Columbia, civil service, and in all other positions and employment hereinbefore referred to in (c) of section 851 of this title . . . shall make selection from the qualified applicants in accordance with the provisions of this chapter". The reference to the excepted service "in the executive branch" is substituted for the exception of the legislative and judicial branches in former section 869. Former section 869 did not prohibit the application of those provisions of the Act of June 27, 1944, which relate to the competitive service in the legislative or judicial branch by reason of the specific provisions of section 311 of the Act of June 10, 1921, as amended (31 U.S.C. 52); 28 U.S.C. 602; and Executive Order No. 67 of June 13, 1895. The reference to appointments of postmasters is omitted from this section since those referred to are in the competitive service. The application of former section 869 to the remainder of the Act of June 27, 1944, is covered by the sections into which the remainder is carried (see Table I).

This section merely continues, and does not in any way change, the requirements in former section 858 relative to the selection of applicants for positions in the excepted service. Under this section, the Federal Bureau of Investigation and other agencies having positions in the excepted service will continue to fill those positions in the same manner that they have been filled under former section 858. Such excepted appointments are appointments authorized to be made without regard to the statutes, rules, and regulations governing appointments in the competitive service and this is not changed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

ASSISTANCE OF UNITED STATES CIVIL SERVICE COMMISSION IN DEVELOPING MERIT SYSTEM FOR DISTRICT OF COLUMBIA

Pub. L. 93-198, title VII, §734, Dec. 24, 1973, 87 Stat. 823, authorized the United States Civil Service Commission to advise and assist the District of Columbia Mayor and Council in the further development of the merit system or systems required by the District of Columbia charter, which was approved on May 7, 1974, and authorized the Commission to enter into agreements with the District government to make available its registers of eligibles as a recruiting source to fill District positions as needed, with the costs of any specific services furnished by the Civil Service Commission to be compensated for under the provisions of section 685a of former Title 31, Money and Finance [31 U.S.C. 1537].

§ 3321. Competitive service; probationary period

(a) The President may take such action, including the issuance of rules, regulations, and directives, as shall provide as nearly as conditions of good administration warrant for a period of probation—

(1) before an appointment in the competitive service becomes final; and

(2) before initial appointment as a supervisor or manager becomes final.

(b) An individual—

(1) who has been transferred, assigned, or promoted from a position to a supervisory or managerial position, and

(2) who does not satisfactorily complete the probationary period under subsection (a)(2) of this section,

shall be returned to a position of no lower grade and pay than the position from which the individual was transferred, assigned, or promoted. Nothing in this section prohibits an agency from taking an action against an individual serving a probationary period under subsection (a)(2) of this section for cause unrelated to supervisory or managerial performance.

(c) Subsections (a) and (b) of this section shall not apply with respect to appointments in the Senior Executive Service or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 422; Pub. L. 95-454, title III, §303(a), Oct. 13, 1978, 92 Stat. 1146; Pub. L. 100-325, §2(d), May 30, 1988, 102 Stat. 581.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 633(24).	Jan. 16, 1883, ch. 27. §2(24), 22 Stat. 404.

The authority of the President to prescribe rules is added on authority of former section 633(1), which is carried into section 3302. Wording is changed because in practice an appointment is not made after probation. The words "or employment" are omitted as included within "appointment".

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1988—Subsec. (c). Pub. L. 100-325 inserted reference to Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

1978—Pub. L. 95-454 substituted "probationary period" for "probation; period of" in section catchline, designated existing provisions as subsec. (a), substituted provisions authorizing the President to take necessary action, for provisions authorizing the President to prescribe rules, and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 3322. Repealed. Pub. L. 95-256, § 5(b)(1), Apr. 6, 1978, 92 Stat. 191

Section, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 422, related to temporary appointments after age 70 in the competitive service.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 30, 1978, see section 5(f) of Pub. L. 95-256, set out as an Effective Date of 1978 Amendment note under section 633a of Title 29, Labor.

§ 3323. Automatic separations; reappointment; re-employment of annuitants

(a) An individual who reaches the retirement age prescribed for automatic separation applicable to him may not be continued in the civil service or in the government of the District of Columbia. An individual separated on account of age under a statute or regulation providing for retirement on account of age is not eligible for appointment in the civil service or in the government of the District of Columbia. The President, when in his judgment the public interest

so requires, may except an individual from this subsection by Executive order. This subsection does not apply to an individual named by a statute providing for the continuance of the individual in the civil service or in the government of the District of Columbia.

(b)(1) Notwithstanding other statutes, an annuitant, as defined by section 8331 or 8401, receiving annuity from the Civil Service Retirement and Disability Fund is not barred by reason of his retired status from employment in an appointive position for which the annuitant is qualified. An annuitant so reemployed, other than an annuitant reappointed under paragraph (2) of this subsection, serves at the will of the appointing authority.

(2) Subject to such regulations as the Director of the Office of Personnel Management may prescribe, any annuitant to whom the first sentence of paragraph (1) of this subsection applies and who has served as an administrative law judge pursuant to an appointment under section 3105 of this title may be reappointed an administrative law judge under such section for a specified period or for such period as may be necessary for such administrative law judge to conduct and complete the hearing and disposition of one or more specified cases. The provisions of this title that apply to or with respect to administrative law judges appointed under section 3105 of this title shall apply to or with respect to administrative law judges reappointed under such section pursuant to the first sentence of this paragraph.

(c) Notwithstanding subsection (a) of this section, a member of the Foreign Service retired under section 812 of the Foreign Service Act of 1980 is not barred by reason of his retired status from employment in a position in the civil service for which he is qualified. An annuitant so reemployed serves at the will of the appointing authority.

(d) Notwithstanding subsection (a) of this section, the Chief of Engineers of the Army, under section 569a of title 33, may employ a retired employee whose expert assistance is needed in connection with river and harbor or flood control works. There shall be deducted from the pay of an employee so reemployed an amount equal to the annuity or retired pay allocable to the period of actual employment.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 422; Pub. L. 96-465, title II, §2314(a), Oct. 17, 1980, 94 Stat. 2167; Pub. L. 98-224, §2, Mar. 2, 1984, 98 Stat. 47; Pub. L. 102-378, §2(10), Oct. 2, 1992, 106 Stat. 1347.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a) .....	5 U.S.C. 715a.	June 30, 1932, ch. 314, §204, 47 Stat. 404.
(b) .....	5 U.S.C. 2263(a).	July 31, 1956, ch. 804, §401 "Sec. 13(a)", 70 Stat. 757.
(c) .....	22 U.S.C. 915(c).	Sept. 8, 1960, Pub. L. 86-723, §10(d), 74 Stat. 832.
(d) .....	33 U.S.C. 544a, 701f.	June 20, 1938, ch. 535, §5, 52 Stat. 805.

In subsection (a), the words "On and after July 1, 1932" are omitted as executed. The words "heretofore or hereafter" are omitted as unnecessary. The words "in the civil service" are substituted for "civilian serv-